DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 07-0244
Sales and Use Tax
For Tax Years 2003-05

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ISSUE

I. Sales and Use Tax—Bowling Shoes.

Authority: IC § 6-2.5-1-21; IC § 6-2.5-2-1; IC § 6-2.5-4-10; IC § 6-8.1-5-1.

Taxpayer protests the assessment of sales tax on receipts from bowling shoe rentals.

STATEMENT OF FACTS

Taxpayer operates a bowling alley in Indiana. After an audit, the Indiana Department of Revenue ("Department") determined that Taxpayer owed sales and use tax for the tax years 2003, 2004, and 2005. Taxpayer protested the imposition of sales tax on receipts received from bowling shoe rentals. Taxpayer did not attend the hearing, and the Department wrote and issued this Letter of Findings based on the materials in the file.

I. Sales and Use Tax—Bowling Shoes.

DISCUSSION

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC § 6-8.1-5-1(b).

The Department found that Taxpayer was renting bowling shoes without collecting sales tax. Indiana imposes "[a]n excise tax, known as the state gross retail tax ["sales tax"] . . . on retail transactions made in Indiana." IC § 6-2.5-2-1(a). Pursuant to IC § 6-2.5-4-10(a) "a person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person."

Further, 45 IAC 2.2-4-27(c)-(d), in relevant part, provides:

> (c) In general, the gross receipts from renting or leasing tangible personal property are subject to tax. The rental or leasing of tangible personal property constitutes a retail transaction, and every lessor is a retail merchant with respect to such transactions. The

> lessor must collect and remit the [sales tax] or use tax on the amount of actual receipts as agent for the state of Indiana.
> . . .
> (d) The rental or leasing of tangible personal property, by whatever means effected and irrespective of the terms employed by the parties to describe such transaction, is taxable.
> . . .

IC § 6-2.5-1-21(a) defines "rental" as "any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration."

Accordingly, when a person transfers any type of control or possession over tangible personal property in exchange for consideration, sales tax is due on the transfer of the property.

Taxpayer asserts that the customers paying for the use of bowling shoes that Taxpayer has provided does not meet the definition of "rental" provided in IC § 6-2.5-1-21. Taxpayer maintains that since the bowling shoes are used for a specific purpose and do not leave the building, the customers are not in possession or control of the shoes.
Taxpayer reasons that since these transactions are not "rentals," sales tax is not due.

However, Taxpayer is mistaken. The statute does not require the person renting the property to gain complete control or possession over the property. As long as the person renting the property receives any type of control or possession of the property, sales tax is due on the transfer of the property. For example, when a person rents a set of golf clubs for use on a golf course and the golf course limits the use of the clubs to its course, sales tax is due on the transfer. While Taxpayer's customers have obtained possession and control of the bowling shoes that has been limited by Taxpayer, the customers are still receiving some type of possession or control. Therefore, the transfer of the bowling shoes for consideration qualifies as a "rental" that is subject to sales tax.

FINDING

Taxpayer's protest is respectfully denied.

AB/WL/DK-August 21, 2007